

## **EXHIBIT G**

Barbara Broughel  
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4/13/07

Dear Warrie,

I was surprised and dismayed that you indicated at our meeting last month, a desire that I discontinue my work on the Battery Carousel. Because I believe that all the work I performed on Phase I of the project was complete, satisfactory and fully consistent with the proposal that resulted in my selection, your decision seemed both inappropriate and groundless. Originally the grounds that you gave me were your concerns for the cost of fabrication. If, in fact, your decision was based on fabrication costs, when to my knowledge, information on fabrication costs was not complete, and Phase 2 designs for fabrication were not yet complete, your response to those concerns seemed both premature and drastic, as well as short-sighted from every perspective. Later in that conversation you also indicated that it might just be your preference to move forward without an artist, regardless of cost considerations, which was both perplexing and disappointing to me.

Obviously I had to devote considerable time and effort in order to make my submission on March 23 2004, and since that time, I had been working on this project for over three years. How you felt you had the right to change your mind, as a matter of personal preference or personal convenience was astonishing to me. The only appropriate time for that would have been during the artist selection process. As you well know, and as we discussed, I was selected by a selection committee, not by yourself, or any other individual with exclusive control over the process.

In spite of the legalities, you somehow feel you have the right to arbitrarily and unilaterally make that decision after this project has co-opted the lion's share of my studio facilities, my time and my resources for more than 3 years, and after I have put many thousands of hours and dollars into research, designs, and the multitude of tasks requested by your offices as necessary to moving the project forward.

I was stunned to receive your letter of April 12<sup>th</sup> in which you give a new (in fact, previously never mentioned) reason for termination; a supposed failure on my part to perform services I agreed to perform on the carousel project. I have no idea what services you might be referring to, and I'm sure you don't either. You know this is a complete fabrication. You also know my efforts to continue the project at great emotional and financial cost were based on a sense of artistic integrity and professionalism which makes this effort on your part to acquire what is not yours all the more painful. Your real motivation is now quite apparent. Your blatantly transparent letter confirms that you have sought over the course of this project to acquire the right to complete the project without me, and without the necessary remuneration that would be appropriate in doing so.

Your letter suggests I have reneged on an agreement I made with you. **Let us be very clear. It is you who have reneged on your agreement with me, not vice-versa**, and it has cost me dearly in terms of lost time, lost revenue and future work... and may also engender costs to my reputation as well. In 2004 you solicited me through a bona fide selection process to produce an artwork slated



for 2006, which I committed to do. Since that time you have placed impediment after impediment in the way of me realizing that artwork.

As part of the responsibility I took on when I accepted this project, (which has dragged on far longer than proposed) I have not pursued other commissions or grants since 2004, because I did not think I could responsibly fulfill them with my commitment to this project looming. In addition, during the same period, I have turned away income in the form of teaching offers and exhibition opportunities.

While you have managed to use me, my reputation and my designs successfully to get you through the Parks Department, Community Board 1 and Arts Commission review processes, and through some public funding efforts, you have done little or nothing at your end to expedite the process of me realizing my work on this project.

On the contrary, in addition to the time spent on research and designs, I have been required on this project to spend hundreds of hours of my time fighting simply for my right to make the work I was selected to perform. Unfortunately, this has also incurred inappropriate legal costs at several junctures. This is unmerited to the extreme, and has been an enormous waste of my time, energy and resources.

In addition, you have refused to acknowledge my right to be paid for much of the work I performed, at your request.

Last spring you told me I would have to give up all of my inherent copyright rights if I wanted to be paid for past-due work which had been performed under a contract which protected those copyrights. Prior to that, in 2004, your office requested that I supply a model, and 28 water color paintings for Carousel fundraising. Instead, these were used to raise money for the Conservancy's operating costs and salaries, and when you were invoiced for my services, I was paid a fraction of what was owed. Under Design Phase 1, you personally insisted I be contracted under an architect, whom you knew never wanted an artist on the project. Not only did that architect regularly express a desire to have me removed from the project, but with your full encouragement and cooperation, they had my prototype fabricated without my participation, against my adamant protests, using a fabricator with whom I was not allowed to communicate!

When the product of that debacle was predictably a \$75,000 monstrosity, you asked me to a meeting in which you apologized to me, insisted you had made a terrible mistake in not honoring my concerns, and pledged to move ahead with my designs. At that same meeting you agreed to contract me in the future under The Conservancy directly, and we agreed (at your request) that I would put together a new team to produce my own prototype. I agreed to work on this new prototype pro-bono in exchange for your agreement to pay for its fabrication costs. I believed at that point that I was finally on firm footing with the project, and with energy and commitment, I spent the next 5 1/2 months moving the project forward... making skin samples, chandelier prototypes, new models and drawings and putting together a very talented new team for a second prototype.

Just one week before production, you pulled the rug out from under me once again, halted funding for fabrication, and reneged on your part of our agreement. For a second time, I was kept from realizing a prototype, which I had put months into designing.



Although I had performed the work on this second prototype urgently (at your request), postponing work on a long overdue one-person show in New York to fulfill your request, I never received thanks or acknowledgement. Instead, your offices reprimanded me for not doing enough, insisting I should also deliver designs, prototypes and color renderings on a pro-bono basis as well!

When your attorney removed the copyright paragraph from a new contract we were negotiating, and I responded with alternative language, as well as language clarifying a payment schedule for Phase 2 and the Fabrication Phase of the project, your response was that your offices would not negotiate with my attorney.

Although I was the only member of the design team selected by a bona fide committee, I was the only member who was not given an opportunity by the architects, to show my designs to the team, in spite of my requests to do so. Instead, I heard rumors that the architects were threatening to sue the Conservancy if the artist was not removed from the project, and I was told I could show you my designs in secret (as though this were an appropriate solution), as you were the decider of what would be included and what would not, in the final design.

After 3 years into the project you have suddenly asked me to discontinue my work, as a matter of personal convenience to you, and now, out of the blue, you have fabricated grievances about my performance and alleged monies due to you, in an attempt to avoid paying me what I am owed, and in an attempt to acquire rights in my designs and work products.

These circumstances would almost be comical if they weren't so tragic.

These maneuvers have made it nearly impossible for me to pursue my work on the project, and while this list is not even comprehensive, it conveys a sense of what I have been up against in attempting to perform my work.

These have, far and away, been the most mismanaged circumstances I have ever worked under, and without any doubt, the most insulting. They reflect either a complete misunderstanding or complete disrespect for the role of an artist or both.

As it was transacted, this project to date has engendered an enormous misuse of my time and good will. Let me repeat, it was you who solicited me onto this project, not vice-versa, and you had every opportunity during the artist selection process if you had wanted to change your mind, to not bring an artist on. To determine this 3+ years into the project, represents an extraordinary waste of another professional's time and energy and resources.

I have tried to maintain a positive, respectful and focused attitude, in spite of these unusual and egregious circumstances, as I was determined, after years of investment from my end, and the extremely public way in which my name has been used, to finally realize the project and be paid for the time and effort I have expended on in.

Until our recent meeting, and your false and defamatory letter of April 12<sup>th</sup>, I had every reason to assume my work on the project would go forward... that you wanted to use my designs, and that you understood, in spite of the ill treatment I have received, the need to have an artist on the project. I



realize at this point, that you may well not grasp why it is important that a trained artist, and not an architect, or a carousel manufacturer, or a president of a parks conservancy make aesthetic decisions relating to a costly project that serves the public. I believe however the Arts Commission, the Parks Department and the Community board all do, and they understand why the value added justifies that artists, like other trained professionals, be treated with respect and paid appropriately for the work they perform.

It is hard for me to believe that your board of directors, the various commissions I presented my proposals before, the various funders for the carousel, or the members of the selection committee for the artist would be comfortable with your decision, or with the way this project has been handled.

In anticipation of a second design phase, and a final fabrication phase, I have given you to date, an original prototype with my RFP, and designs for thirty five unique, original sea life forms, all of which conformed to my initial submission. I also have given you a lighting plan (including lighted figures, chandeliers and sea anemones), a chandelier prototype, custom designs for plastics, a floor design for a lighted floor, a design for an exterior enclosure, soundscape and other elements. If you proceed as you have indicated, all of this work will have been for nothing (other than owning the designs for use in some other way). I assume you recognize that absent my approval, you cannot use my copyrighted designs in any respect or create derivative artworks based upon my designs. You should also be aware that I am owed a substantial amount for my uncompensated time and effort spent based on your representations that the uncompensated work I have performed was essential to "moving the project forward" and a prerequisite to completing the project through a Design Phase 2 and Fabrication Phase in which I would be paid under contract in a manner appropriate to the standards applied to artists working on public commissions.

I do appreciate your candor that you are being stretched to your limit. I too, have been stretched. I respectfully disagree with your explanation that, because you are tired, and expect your tenure as president of The Conservancy to end in the next 4 to 5 years, and because you have ambitious goals for new projects you would like to see completed in that time... that therefore entitles you to disengage with commitments you have already taken on, to produce an artwork for the carousel. I categorically deny each and every allegation of your letter regarding my failure to perform, and your demand for compensation.

If your goal is to move the project to completion as soon as possible, I do not think resolving this through the court system will make things go faster. Nor do I think that taking an expedited cookie-cutter approach to a design will necessarily expedite fabrication, or be in the best interests of Battery Park, or of the people of The City.

I have spoken to members of the selection committee who have recommended that there be a meeting convened to include all members of the committee to discuss the situation. You will be contacted if I decide to proceed with their recommendation.

As you know, there are several outstanding unpaid invoices for both out of pocket expenses and for services I was requested to perform. I would appreciate being paid in full for the ones you have in hand, as they are long past due. I can provide copies of these if that is necessary. In addition, you also have several maquettes, models, samples, and pieces of equipment that belong to me. I would

request that all these be delivered with insurance to my studio storage facility until such time as this situation is resolved. Again, I can provide a list of the works and materials on loan if need be.

I too hope we will be able to resolve this matter without the need for further legal action. A reasonable negotiation would include payment for past due monies owed plus additional expenses incurred during this last phase of the project, legal fees, and should you decide to go forward with my designs, a reasonable license fee for the use of my designs and the items outlined in your letter. If you do decide to use and pay for my designs, I shall be entitled to credit at my own option, as the original artist, on whose designs, the work is based.

Finally, I am genuinely stunned by the judgement you exercised in making the false allegations of your letter. You know they are not true, and that the actual issue is that you prefer, as a matter of convenience to yourself, to produce this project without an artist. After 3 years of working together I am shocked you would resort to such a dehumanized and malicious approach to achieving your goals. In any case, I am advised by my lawyer that, should you communicate these false allegations to third parties, such statements are defamatory, for which you will be accountable.

This letter is written for settlement purposes and is without prejudice to any legal and equitable rights which I have and may ultimately assert in a court of law.

Barbara Broughel

Cc: BH, TB, FT